



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201135034

JUN 20 2011

*Uniform Issue List: 408.03-00*

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**Legend:**

Taxpayer A = \* \* \*

Annuity X = \* \* \*

Financial Institution A = \* \* \*

Financial Advisor A = \* \* \*

IRA X = \* \* \*

Amount 1 = \* \* \*

Amount 2 = \* \* \*

Date 1 = \* \* \*

Date 2 = \* \* \*

Form A = \* \* \*

Dear \* \* \*:

This is in response to a request submitted on your behalf by your authorized representative dated October 26, 2010, as supplemented by additional correspondence submitted on December 21, 2010, February 18, 2011, March 10, 2011, and May 6,

\* \* \*

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2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age      represents that she received a distribution of Amount 1 from Annuity X, an Individual Retirement Annuity (IRA). Taxpayer A asserts that her failure to accomplish a rollover of Amount 2, a portion of Amount 1, within the 60-day period prescribed by section 408(d)(3) was due to errors made by Financial Advisor A and Financial Institution A. Taxpayer A also represents that Amount 2 has not been used for any other purpose.

Taxpayer A first learned of Annuity X when she inherited it following her husband's death in 2005. She represents that she did not know that Annuity X was an IRA within the meaning of section 408 of the Code because it was established by her husband prior to his death, and was erroneously listed on Financial Institution A's monthly consolidated statement under the category of "Investments" instead of "CD & Retirement".

In 2008, Taxpayer A went to Financial Advisor A for tax and financial planning advice. Financial Advisor A was concerned about the financial condition of the issuer of Annuity X and advised Taxpayer A to liquidate Annuity X and reinvest the proceeds thereof in a more secure investment. Financial Advisor A completed Form A for Taxpayer A's signature requesting a complete liquidation of Annuity X, and faxed it to the issuer of Annuity X. Annuity X was liquidated and the proceeds thereof, Amount 1, was deposited electronically in a non-IRA account on Date 1.

Financial Advisor A states that he was not aware that Annuity X was an IRA because of its erroneous classification by Financial Institution A as a regular, rather than a retirement investment. Financial Advisor A is not affiliated with Financial Institution A. Documentation signed by Financial Advisor A confirming the foregoing, along with a copy of Form A and a copy of a monthly consolidated statement from Financial Institution A was submitted with this ruling request and confirms Taxpayer A's assertions.

Taxpayer A represents that she first learned that Annuity A was an IRA in 2009, when during the preparation of her tax return for 2009, Financial Advisor A identified that Amount 1 was reported as a taxable distribution on Form 1099-R. On Date 2, Taxpayer A withdrew Amount 2 from her non-IRA account and deposited it in IRA X.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 2.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6) or 408(b)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section

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408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was due to errors made by Financial Advisor A and Financial Institution A, which resulted in Amount 2 being deposited into a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2 from Annuity X. Accordingly, provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact \* \* \* (ID \* \* \*) at \* \* \*.  
Please address all correspondence to \* \* \*.

Sincerely yours,



Donzell H. Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: \* \* \*